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EXPRESS MAIL NO. EV 326 041 235 US

DATE OF MAILING February 16, 2005

Patent
Case No. 11108-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
James A. Tranquilla)
Serial No.: 09/872,178)
Filed: June 1, 2001)
For: A METHOD OF REDUCING)
CARBON LEVELS IN FLY ASH)

Art Unit: 1755

Examiner: Michael A. Marcheschi

RECEIVED

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OFFICE OF PETITIONS

**PETITION UNDER 37 CFR 1.137(a) TO REVIVE UNAVOIDABLY
ABANDONED APPLICATION, OR ALTERNATIVELY UNDER 37 CFR 1.137(b) TO
REVIVE UNINTENTIONALLY ABANDONED APPLICATION**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant, the assignee of record for the above-captioned invention, hereby petitions to revive the above-referenced U.S. patent application S/N 09/872,178 ("the '178 application"). In particular, the invention was assigned from inventor James M. Tranquilla to Applicant EMR Microwave Technology Corporation on May 9, 2001 (Assignment Tab 1). The invention embodied in the application has at all times been of importance to the Applicant. (Tab 2, Par. 4).

Applicant was the recipient of a loan of money from the province of New Brunswick, Canada (Declaration Tab 2, Par. 5). As security for the loan, Applicant

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entered into a security agreement with New Brunswick. (Tab 2, Par. 5). The assets of Applicant were provided as security. (Tab 2, Par. 5). Applicant subsequently defaulted on the loan. (Tab 2, Par. 6). Applicant received a demand letter from New Brunswick requiring Applicant to transfer their assets to New Brunswick. (Tab 2, Par. 6). Based on the Demand letter, Applicant believed that the above-captioned application would be transferred to New Brunswick and that New Brunswick would assume responsibility for continuing its prosecution. (Tab 2, Par. 6).

The U.S. Patent and Trademark Office mailed a first Office action on January 22, 2003 (Tab 3). Applicant did not file a Response because it believed that New Brunswick would pursue prosecution of the application and exploit the invention. (Tab 2, Par. 7). It was never the intention of Applicant to abandon the application. (Tab 2, Par. 7). The abandonment of this application was permitted to occur on a belief that now appears to be incorrect. (Tab 2, Par. 7). From the time of the loan default until now, Applicant has repeatedly and diligently tried to determine if New Brunswick was pursuing prosecution of the application, either as a licensee or assignee of the invention. (Tab 2, Par. 7). It has now become apparent that New Brunswick has not and does not intend to pursue prosecution of the application. (Tab 2, Par. 7).

Applicant is thereby immediately filing this Petition to Revive. The entire delay from the due date for filing a response to the outstanding Office Action until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable. Since Applicant has been diligent in trying to determine if New Brunswick would pursue the application, from the time of abandonment until now, Applicant respectfully requests that the application be revived.

For all of these reasons, Applicant submits that the abandonment of the '178 application was unavoidable. It was not possible for Applicant to file a Response to the

outstanding Office action before New Brunswick's intentions could be determined. Accordingly, the delay in filing the enclosed Response was unavoidable.

Alternatively, Applicant submits that the abandonment was unintentional for at least all of the reasons set forth above. The entire delay in filing the required Response to the outstanding Office Action from the date for the required Response until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. Applicant did not intentionally permit the application to become abandoned.

In accordance with 37 CFR 1.137(a) and (b), and in addition to the above showing and statement as to why the delay in filing the Response was unavoidable, or in the alternative unintentional, Applicant has enclosed herewith a Response to the outstanding Office action.

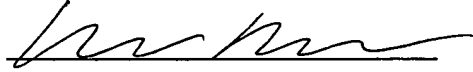
Pursuant to 37 CFR 1.137(a)(2) or (b)(2), the undersigned attorney hereby authorizes the Commissioner to charge payment of the petition fee as set forth in 37 CFR 1.17(l), or alternatively as set forth in 37 CFR 1.17(m), to Deposit Account No. 23-1925. A duplicate copy of this paper is enclosed.

Applicant submits that a terminal disclaimer is not required to accompany this Petition, since this application is a utility application filed after June 8, 1995 (37 CFR 1.137(d)).

A Response to the outstanding Office Action is being filed herewith.

Applicant respectfully requests that any questions about this Petition, or the accompanying Response, be directed to the undersigned attorney at (312) 321-4200.

Respectfully submitted,



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